



Roll Call Number

21-1485

Agenda Item Number

34

Date October 4, 2021

ACCEPTING PROPOSAL OF PARKMOBILE, LLC FOR PAY-BY-CELL APPLICATION SERVICES FOR MULTI-SPACE PARKING METER SYSTEM AND APPROVING AGREEMENT FOR SAME

WHEREAS, the Traffic and Transportation Division plans to replace its existing single-stall parking meters with Flowbird (Cale America, Inc.) multi-space parking meters equipment and operating software throughout downtown Des Moines beginning in Summer 2021; and

WHEREAS, on August 24, 2020, the Procurement Division issued a Request for Proposals (N21-33) for Pay-By-Cell Application for a Multi-Space Parking Meter (MSM) System that would be compatible with the City's selected MSM equipment and software system (RFP), including the Pay-By-Cell application software and software hosting and maintenance, and City staff operations training; and

WHEREAS, the Evaluation and Selection Committee reviewed the proposals and recommended that the proposal submitted by ParkMobile, LLC, 1100 Spring Street NW, Suite, Atlanta Georgia 30309 be accepted as the best proposal; and

WHEREAS, City staff have negotiated an agreement for the above described services and software for a period through September 30, 2024, at no cost to the City in consideration of a \$.25 charge peer transaction to users of the Pay-By-Cell Application, with an option to extend the agreement for one additional 3-year term at the City's option, a copy of which is on file in the City Clerk's Office.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, that the proposal submitted by ParkMobile, LLC, for Pay-By Cell Application for a Multi-Space Parking Meter System is hereby accepted and the City Manager is hereby authorized and directed to execute an agreement as described above, and the City Clerk is authorized and directed to attest to the City Manager's signature.

(Council Communication No. 21- 418) Moved by Gatto to adopt.

APPROVED AS TO FORM: /s/ Ann DiDonato Ann DiDonato, Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, GRAY, MANDELBAUM, VOSS, WESTERGAARD, and TOTAL. Includes signature of T.M. Frankin Cownie, Mayor.

CERTIFICATE I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written. Signature of P. Kay Cmelik, City Clerk.

**AGREEMENT
FOR
PAY-BY-CELL APPLICATION SERVICES FOR
MULTI-SPACE PARKING METER SYSTEM
BETWEEN
CITY OF DES MOINES, IOWA
AND
PARKMOBILE, LLC**

THIS AGREEMENT is made and entered into as of _____, 2021, by and between the City of Des Moines, Iowa, a municipal corporation organized and existing pursuant to the laws of the State of Iowa, (“City”) and ParkMobile, LLC, a Delaware limited liability company located at 1100 Spring Street NW, Suite 200, Atlanta, GA 30309 (“ParkMobile” or “Contractor”).

WHEREAS, the City plans to replace its existing single-stall parking meters with Flowbird (Cale America, Inc.) multi-space parking meters (“MSM”) equipment and operating software throughout downtown Des Moines beginning in Summer 2021; and

WHEREAS, on August 24, 2020, the Procurement Division issued a Request for Proposals (N21-33) for Pay-By-Cell Application for a Multi-Space Parking Meter System that would be compatible with the City’s selected MSM equipment and software system (RFP), including the Pay-By-Cell application software and software hosting and maintenance, and City staff operations training (“**the PbC App Services**”); and

WHEREAS, the Evaluation and Selection Committee reviewed the proposals and recommended that the proposal submitted by Contractor be accepted as the best proposal; and

WHEREAS, on October 5, 2021 by Roll Call 21-_____, the City Council accepted the proposal submitted by Contractor dated September 23, 2020 (“**Proposal**”) and approved this Agreement for the provision of the PbC App Services.

In consideration of the mutual promises herein contained, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1: SCOPE OF SERVICES

Contractor agrees to provide the Scope of Services and to provide the PbC App Services as set out in (Tab 3 pages 17 to 54 of the Proposal) **Exhibit A** and the Schedule set out in **Exhibit B** under the terms and conditions set forth in this Agreement. The services provided by Contractor shall include those described in the RFP and the Proposal, except as modified by this Agreement, including Exhibits A and B. Contractor shall not perform work beyond the Scope of Services, except pursuant to the City’s prior written request as mutually agreed in an amendment executed by Contractor and the City. Contractor is not hereby granted the exclusive right to provide such Services to the City.

The following definitions shall apply to this Agreement:

“**End User**” means the parking customers that elect to pay for on-street parking meter transactions using a cellular, mobile telephone or other computing device.

“**SMS/Text reminder**” means the Short Message Service or Text Message sent to the End User prior to the expiration of the parking transaction.

“**Branded App**” means the City having its trademark/logo on the Contractor’s PbC App Services application.

“**End User Fee**” means the convenience fee payable on a per transaction basis or a membership fee available to Preferred Parker End Users.

“**Preferred Parker End Users**” means an End User who elects to pay a membership fee to the Contractor in consideration for discounted convenience fees as a frequent user of the System.

“**User App**” means the PbC App Services application that the Contractor makes available to End Users.

“**Transaction**” means the purchase a specified amount of time by an End User for a vehicle to occupy a parking space.

SECTION 2: SOFTWARE LICENSE, MAINTENANCE AND HOSTING

- a. License. Subject to and conditioned on City's compliance with the terms and conditions of this Agreement, ParkMobile hereby grants to City a irrevocable, City-wide, including all of the City's existing and future parking meter locations, nonexclusive, nontransferable license to access and use the software as described on pages 17-54 of the Proposal (the “**Software**”). The term of the License shall be for the term of this Agreement.
- b. License Representations and Warranties. ParkMobile represents and warrants and covenants to the City as follows:
 1. ParkMobile is duly organized and validly existing under the laws of the state of Delaware and has full power and authority to carry on its business and to own and operate its properties and assets.
 2. The execution, delivery and performance of this agreement has been duly authorized by all requisite corporate or limited liability company action, as applicable.
 3. ParkMobile has the power and authority to execute and deliver this Agreement, perform its obligations and grant any licenses granted hereunder.
 4. ParkMobile has all rights, titles and interests necessary to grant any licenses granted under this Agreement.
 5. The execution, delivery and performance by ParkMobile of this Agreement and its compliance with the terms and provisions hereof do not and will not conflict with or result in a breach of any of the terms or provisions of or constitute a default under the provisions of its charter documents or bylaws, any order, writ, injunction or decree of any court or governmental authority entered against it or by which any of its property is bound, or agreement with or obligations to a third-party.
 6. ParkMobile will at all times comply with applicable laws and regulations.
- c. ParkMobile agrees to provide the maintenance and hosting services pursuant for the Software to the service level terms of **Attachment 1**, which is incorporated as part of this Agreement.

SECTION 3: AGREEMENT DOCUMENTS

This Agreement shall include: (1) this Agreement; (2) the RFP, including the General Terms and conditions (Sections 25-41 of Section 4 of the RFP), and (3) the Contractor's Proposal dated September 23, 2020. The sample ParkMobile Parking Services Agreement submitted with the Proposal (Tab 6) shall not apply to this Agreement. The listed documents are to be interpreted so as to give effect to all terms of each and to harmonize their provisions. To the extent there are provisions in the listed documents that are irreconcilable, then, the order of precedence is as listed in the first sentence of this section. This Agreement, together with all exhibits and attachments hereto, constitutes the entire agreement between the parties, and all other promises, representations or statements heretofore made, verbal or written, are merged herein.

SECTION 4: AGREEMENT ADMINISTRATION, AGREEMENT DOCUMENTS, AND AMENDMENT OF AGREEMENT

The City Traffic Engineer, or his or her designee, shall be the project manager and liaison between Contractor and the City for the purpose of administration of the services to be performed under this Agreement. The services to be performed by Contractor shall at all times be subject to the general supervision of the City project manager.

SECTION 5: TERM OF AGREEMENT

This Agreement shall be in full force and effect from October 5, **2021** through September 30, **2024** unless terminated earlier pursuant to Section 14 of this Agreement or unless extended by the City by written addendum executed by both parties. The option to extend the contract for up to one (1) additional three (3) year term is at the sole option of the City.

The relevant period of the warranty and software maintenance support begins on the date of final acceptance by the City, as described in Section 7 below.

SECTION 6: FEES AND PAYMENT

- a. End User Fees. The Contractor may charge the End User a fee not to exceed \$0.25 per on-demand transaction. The Contractor may charge the End User a fee not to exceed 15% of the total transaction fee per reservation transaction.
- b. The City will collect all meter parking and transaction fees and will remit to the Contractor such transaction fees (End User Fees) as are received by the City. ParkMobile will issue invoices to the City on a monthly basis for all fees due to ParkMobile under this Agreement. City shall pay each invoice within thirty (30) days of the invoice date.
- c. The City shall not be charged for or pay Contractor any additional amount or fees for the PbC App Services, including training, the Software License, software maintenance and hosting services. The Contractor's sole compensation for services rendered and costs incurred under this Agreement shall be the \$0.25 End User Fee during the term of this Agreement and any renewal thereof.

d. Software Hosting and Maintenance Fees.

If the City suspends or terminates the Services to be rendered by ParkMobile under this Agreement, payment shall be made by the City for Services rendered by ParkMobile prior to the effective date of termination.

SECTION 7: DELIVERY OF SERVICES

- a. Contractor will deliver the PbC App Services as described in Exhibits A and B.
- b. Final acceptance of the PbC App Services will occur upon satisfactory completion of the schedule of activities shown in the planning, deployment and adoption phases, including acceptance testing, and training specified in Section 9 of this Agreement and successful completion of the thirty-day operational test as described in Section 3.E of the RFP and as approved by the City.
- c. Software: The Contractor warrants that Contractor's software controlling licensed programs and products, shall be free of material defects and substantially conform to current Contractor specifications for a period of three (3) years from the date of shipment to the City. Contractor shall use its best efforts to correct defects and supply to the City, at the Contractor's expense, a corrected version, within a reasonable time after the City notifies Contractor in writing of defects and provides the programs and/or instructions required to reproduce the claimed defect. This warranty does not cover modifications to the licensed program, the Contractor's product, and/or connection to unapproved equipment made by any person or any defect caused by or otherwise related to such modifications or connections.

SECTION 8: PROTECTION OF DATA - PCI/DSS COMPLIANCE

In addition to those user data security protections described in the Proposal (Tab 3, pages 35-38), ParkMobile agrees to the following:

- a. The Contractor will comply with Payment Card Industry (PCI) regulatory standards including the Data Security Standards (DSS). The Contractor represents that it will protect cardholder data and will be annually certified as a PCI compliant service provider, while maintaining level 1 Validated Service Provider status, and agrees to provide evidence of said certification to the City prior to start up, annually, and upon request. Any costs that are incurred by the Contractor to attain or maintain PCI DSS certification are not reimbursable by the City.
- b. The Contractor covenants and agrees to comply with Visa's Cardholder Information Security Program/CISP, MasterCard's Security Data Program and SOP Rules, and with all other credit card association or National Automated Clearing House Association (NACHA) Rules of member organizations (generally "Association"), and further covenants and agrees to maintain compliance with the Payment Card Industry Data Security Standards (PCI DSS), MasterCard Site Data Protection (SDP), and (where applicable) the Payment Application Data Security Standard (PA-DSS), (collectively, the "Security Guidelines"). Contractor represents and warrants that all of the hardware, software and communication components that it supplies to the City or uses under this Contract are and will be PCI DSS compliant. Contractor further agrees to exercise

reasonable due diligence to ensure that all its service providers, agents, business partners, contractors, subcontractors and any person or entity that may have access to credit card information under this Contract maintain compliance with the Security Guidelines and comply in full, with the terms and conditions set out in this Section. Contractor further certifies that the PbC App Services, as described herein, are to be deployed in a manner that meets or exceeds PCI certification and will be deployed on a network that meets or exceeds PCI standards.

- c. The Contractor shall not retain or store CW2/CVC2 data subsequent to authorization of a credit card transaction, shall prohibit disclosure of any and all cardholder information, and in the event of a compromise of credit card information of any kind Contractor shall immediately notify the City in writing, and shall provide, at Contractor's sole expense, all necessary and appropriate notification to parties and persons affected by such disclosure and compromise.
- d. The Contractor agrees to provide to the City or to its permitted assigns the right to audit, at the City's expense and at reasonable times, all physical locations, systems or networks that process credit cards on behalf of the City. No review, approval, or audit by the City shall relieve the Contractor from liability under this section or under other provisions of the Contract.
- e. If any Association requires an audit of the Contractor or any of Contractor's Service Providers, agents, business partners, contractors or subcontractors due to a data security compromise event related to this Contract, Contractor agrees to cooperate with such audit. If as a result of an audit of the City it is determined that any loss of information is attributable to the Contractor, the Contractor shall pay the City's reasonable costs relating to such audit, including attorney fees. The Contractor also agrees to immediately provide written notice to the City of any breach of a system owned, operated or maintained by the Contractor that contains cardholder data or information.
- f. Contractor agrees to require its third-party providers to comply with the requirements of subsections a-e above.

SECTION 9: TRAINING

Contractor shall provide training in the areas of administration and enforcement. Training will be broken into sessions of no more than two (2) hours in length. Contractor shall provide the City with access to Contractor training materials at the beginning of the Project. Training shall cover detailed operations of the system, day-to-day operation, troubleshooting, and functionally of the software related to the User App and the PbC App Services. Contractor shall provide user manuals and training materials to all training attendees. Contractor shall provide an outline of training topics at least two (2) weeks prior to the scheduled training session.

Training shall occur no less 30 days prior to the scheduled launch and go-live date of the User App as shown in Exhibit B.

Training sessions shall be offered as follows:

- a. Up to 8 individuals will be accommodated in each session.

- b. The minimum hours of training sessions for each topic shall be:
 - i. Related to enforcement users: 2 hours
 - ii. Related to administration users: 4 hours
 - iii. Related to read-only users: 2 hours
 - iv. Related to City customer service and clerical users: 2 hours
- c. The material and user guide presented for a training topic should be planned to be presented over more than one calendar day and for multiple offerings to better facilitate staff workloads. For example, the training for enforcement might be scheduled in 2-hour blocks over different days and staggered between morning and afternoon sessions. Each training attendee will receive user guides and any written material presented for a training topic in both a hard copy printed format and as an electronic format (PDF). It is anticipated that 12 copies of printed materials and user guides will be needed.
- d. Each topic session module will be offered at least twice.
- e. The delivery method of the initial training sessions will be live and conducted virtually, unless approved otherwise by the City.
- f. Follow-up training sessions for each topic should be offered for up to 4 hours for each module.
- g. Audio/video recordings of all training sessions shall be produced and made available on demand to the City for use in subsequent training of any new staff or to serve as refresher materials.
- h. The scheduling of the sessions will be coordinated with similar training which will be provided by the City's multi-space meter provider (Flowbird) and approved by the City.
- i. The vendor will provide on-going education and support to introduce any new services and solutions to the market.

SECTION 10: TRADEMARK LICENSE

Each party (each a "licensor") grants the other party (each a "licensee") a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to use licensor's trademarks, tradenames and logos (the "Marks") during the term of this Agreement solely in connection with the Services as provided in this Agreement. Any such use by licensee is subject to and must be in accordance with licensor's guidelines as provided to licensee in written format in a reasonable manner and timeframe to enable compliance by licensee. In addition, any use by licensee of licensor's Marks in a manner which is other than identification of the PbCApp Services is subject to licensor's prior written (which includes email) approval. All use of the City's Marks requires the prior written approval of City (which includes email). All use of the Marks inures to the benefit of the respective licensor.

SECTION 11: COVID-19 PRECAUTIONS

Contractor agrees to comply with City written directions for COVID-19 precautions and practices, as such may be changed from time to time, including by a Mayor's Emergency Proclamation, Governor's Emergency Proclamation, or order of the City Manager. The City strongly encourages Contractor to adhere to CDC guidelines related to wearing masks, social distancing and other methods of slowing the spread of COVID-19 while conducting work on the City's behalf.

If Contractor or their agent(s) is unable to adhere to this requirement, Contractor shall notify the City and provide an explanation as to why they are not able to comply with the PPE requirement and shall agree to mutually acceptable alternative measures to protect the health and safety of City staff and residents and Contractor staff and agents.

For the sake of clarity, this Section 11 shall only apply to ParkMobile's employees or agents while they are on site in the City.

SECTION 12: OWNERSHIP OF CITY DATA AND CONFIDENTIALITY OF USER DATA

Any data specific to the City's operation that is provided by City to ParkMobile to be used in the provision of Services that is not available to ParkMobile publicly or by other means ("City Data") remains the sole and exclusive property of City. City grants ParkMobile a perpetual, irrevocable, royalty-free license to use City Data in connection with the Services.

Any information, data, and other content, in any form or media, that is submitted, posted, or otherwise transmitted by or on behalf of an End User, directly or indirectly, through the Branded App and/or User App ("User Data") remains the sole and exclusive property of ParkMobile. ParkMobile grants the City a revocable, royalty-free, non-exclusive, non-assignable, non-transferable license to applicable User Data for the duration of the term only for the City's internal use in connection with the Services.

Data and information related to City's and/or End Users' use of the Services that is used by ParkMobile in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services ("Resultant Data") remains the sole and exclusive property of ParkMobile. ParkMobile grants the City a perpetual, irrevocable, royalty-free, non-exclusive, non-assignable, non-transferable license to applicable Resultant Data for the City's internal use.

Each of the aforementioned licenses granted by ParkMobile to City, and ParkMobile's use of User Data and City Data under this Agreement are subject to applicable data privacy laws and regulations.

SECTION 13: NOTICES AND PAYMENT

Any notice, request, reports, payments and invoices, or other communication to either party by the other concerning the terms and conditions of this Agreement, shall be in writing and shall be

deemed given when hand-delivered or sent postage prepaid, by certified or registered United States mail, return receipt requested, or deposited into the United States mail, and actually received by the addressee, addressed as follows:

If to ParkMobile: ParkMobile, LLC
1100 Spring Street NW, Suite 200
Atlanta, Georgia 30309
Attention: Legal Department

Email: legal-notices@parkmobile.io

If to City: City of Des Moines
Traffic & Transportation Division
400 Robert D. Ray Drive
Des Moines, Iowa 50309-1891
Attn: John A. Davis, City Traffic Engineer

With a copy to: City of Des Moines
IT Department
602 Robert D. Ray Drive
Des Moines IA 50309
Attn: MaryLee Woods, Deputy Chief Information Officer

The person and the place to which notices are to be mailed to either party may be changed from time to time by notice given in accordance with the provisions of this Section.

SECTION 14: TERMINATION

Termination for Cause. The City may by written notice of termination for cause terminate the Agreement if the Contractor fails to make progress in compliance with this Agreement or materially fails to perform the other provisions of this Agreement, and does not cure such failure or breach within a period of fifteen (15) days after written notice from the City specifying such failure or for failure or breach not reasonably capable of cure within fifteen (15) days, if Contractor fails to provide a cure plan for review and approval by the City within fifteen (15) days after written notice from the City specifying such failure.

In the instance where, as applicable, Contractor fails to cure within (15) days of written notice specifying with detail failure to perform, or fails to provide a reasonably acceptable cure plan within fifteen (15) days of written notice specifying with detail failure to perform (or supplies a reasonably acceptable cure plan but then fails to diligently prosecute such plan), Contractor may be subject to termination for cause by written notice without being provided further opportunity to cure or to provide a cure plan, as applicable. Contractor will be paid for work the City reasonably determines is satisfactorily performed through the effective termination date.

ParkMobile may by written notice of termination for cause terminate the Agreement if the City materially fails to perform the other provisions of this Agreement, and does not cure such failure or breach within a period of thirty (30) days after written notice from ParkMobile specifying such failure or for failure or breach not reasonably capable of cure within thirty (30)

days, if the City fails to provide a cure plan for review and approval by ParkMobile within thirty (30) days after written notice from ParkMobile specifying such failure.

Termination if No Longer in Best Interests of the City. The City may, by giving at least 60 days' written notice to the Contractor, terminate this Agreement if the City determines that further performance by the Contractor is no longer in the best interests of the City. The Contractor shall be compensated for Work satisfactorily performed through the effective termination date, together with reasonable costs of termination including costs of cancellation of subcontracts and supply agreements, and for non-cancelable or non-returnable materials and equipment procured for this Agreement that cannot be used by Contractor for its other ongoing contracts. Appropriations. The City may also terminate this Agreement if the City Council fails to appropriate the necessary funds, with allowance that Contractor will be paid in full for any outstanding undisputed invoices. The City confirms that sufficient funds have been allocated for performance during the first fiscal year in which this Agreement is in effect, and that it will advise Contractor as soon as practicable when it reasonably determines that funding sufficient for any subsequent fiscal year may not be appropriated.

SECTION 15: PERSONNEL

Contractor will assign qualified professional personnel and other Contractor support staff as necessary to complete the Scope of Services. In the event that the employment of any such person should be terminated prior to the completion of the Scope of Services, or such person is unavailable due to other good cause, then in such event Contractor shall, at its discretion, assign such other persons as necessary to complete the services.

SECTION 16: INSURANCE/INDEMNIFICATION

Contractor shall purchase and maintain insurance in accordance with the insurance requirements set forth in Section 5 of the RFP, as set forth in **Attachment 2** of this Agreement to protect Contractor and City throughout the duration of this Agreement. Contractor shall not commit any act which shall invalidate any policy of insurance. Contractor shall defend, indemnify, and hold harmless City in accordance with the indemnification requirements set forth in the RFP, set forth in Attachment 2 of this Agreement. Contractor shall be subject to all terms and provisions set forth in Attachment 2.

SECTION 17: NON-DISCRIMINATION

As prescribed in #38 of Section 4 "Non-Discrimination", of the RFP, the Contractor shall not discriminate or permit discrimination in its operations or employment practices against any person or group of persons on the grounds of race, color, creed, national origin, gender, age, sex, religion, sexual orientation, gender identity, familial status, or disability and shall furnish evidence of compliance with this provision when so requested by the Contractor.

SECTION 18: RECORDS AUDIT

The Contractor shall maintain such account records in connection with its performance of services for the City as may be reasonably required by the City. Such account records shall be

kept for a period of at least three years following the termination of this Contract. The Contractor shall afford the City's agents and auditors on reasonable notice reasonable facilities and access for the examination and audit of its records pertaining to its performance and shall, upon request of the City on reasonable notice, produce and exhibit all such records.

SECTION 19: CONFIDENTIAL INFORMATION

As provided in the RFP, Section 4- Standard Provisions and Requirements for Requests for Proposals, section 8, "Proposals Not Confidential", under Iowa Code Chapter 22, all records of a governmental body are presumed to be public records, open to inspection by members of the public. Section 22.7 of the Iowa Code sets forth a number of exceptions to that general rule, establishing several categories of "confidential records". In the event that the CITY receives a request for public records, the terms of such Section 4.8 shall apply to those records and documents deemed to be Confidential Information by Contractor under this Agreement.

Contractor agrees to provide specific written designation of any information it desires to be "confidential information" under this Agreement. Contractor acknowledges that this Agreement is a public record subject to Iowa Code Chapter 22 and specifically does not make any claim of confidentiality regarding this Agreement.

SECTION 20: GOVERNING LAW

This Agreement will be governed by and interpreted and construed in accordance with the laws of the State of Iowa and any action relating to this Agreement shall be brought in the Iowa District Court in Polk County, Iowa or the United States District Court for the Southern District of Iowa.

SECTION 21: COMPLIANCE WITH LAW AND CONSIDERATION OF ADJUSTMENTS TO AGREEMENT

Contractor shall comply, at all times during the term of this Agreement, with ordinances, laws, rules regulations, codes or policies of City, County or State government or of the United States Government, and of any political division, subdivision or agency, authority or commission thereof which may have jurisdiction to pass laws or ordinances or enact rules, regulations, codes or policies with respect to the matters hereunder. Amendments to this Agreement require the written approval of the City and Contractor by their authorized representatives.

SECTION 22: NONWAIVER OF RIGHTS

No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

SECTION 23: SEVERABILITY

If one or more clauses, sections, or provisions of this Contract, or the application thereof, shall be held to be unlawful, invalid, or unenforceable, the remainder of this Contract and the application of its remaining provisions shall not be affected thereby.

SECTION 24: LICENSES AND PERMITS

Contractor shall obtain all applicable licenses and/or permits as required by federal, state, or local law required to provide the City with the PbC App Services.

SECTION 25: AGREEMENT CONSTRUCTION

Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine, or neuter gender, and as disjunctive or conjunctive, according to the context. Any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Contract or any amendments or attachments hereto.

SECTION 26: REPRESENTATIONS OF PARTIES

City and Contractor represent that each has the full power and proper authority to make and execute this Contract, to exercise its rights, powers and privileges as described herein, and to perform the agreements and covenants set forth herein. Contractor further warrants that it has the authority to enter into and be bound by the terms of this Contract and no order of any bankruptcy or other court, and no agreement with others, prohibits or limits such authority.

SECTION 27: NO THIRD-PARTY BENEFICIARIES

It is not the intention of the signatory parties by entering into this Agreement to create any rights in any person not a party to this Agreement.

SECTION 28: GENERAL

- a. Successors and Assigns. Neither party shall assign or transfer this Agreement or any of its rights hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, provided however, that Contractor may without such prior written consent assign this Agreement or any of its rights or interests hereunder, or delegate any of its obligations hereunder to an affiliate, including to an affiliate that is a successor pursuant to a merger, reorganization, consolidation or sale, or to an affiliate that acquires all or substantially all of Contractor's assets or business without prior approval, and in such instance Contractor shall notify the City promptly following any such assignment. Notwithstanding the foregoing, such assignment shall not be effective until the City has received written assurance that such assignee has accepted the assignment of this Agreement and agrees to be bound by all of the terms, conditions, obligations and responsibilities of the Maintenance Agreement, including, without limitation, the insurance and indemnification requirements, and agrees to save and hold harmless the City of Des Moines from liability under this Agreement,

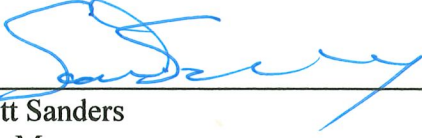
including for acts performed by Contractor prior to the date of this Assignment. Any request to assign or transfer this Agreement shall be deemed to be granted if the recipient of such a request has not acted upon such request within thirty (30) days of its receipt. This Agreement shall inure to the benefit of the parties and their respective permitted successors and assigns.

- b. Force Majeure. In the event that performance by either party of any of its obligations or undertakings under this Agreement shall be interrupted or delayed by any occurrence not occasioned by the conduct of either party hereto, whether such occurrence be an act of God such as lightning, earthquakes, floods, or other like causes, the common enemy, the result of war, riot, strike, lockout, civil commotion, sovereign conduct, explosion, fire, COVID-19 or any other pandemic, utility or telecommunications outage, or the act or conduct of any person or persons not a party to or under the direction or control of a party hereto, then such performance shall be excused for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.
- c. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.
- d. Independent Contractor. Contractor's relationship with City shall at all times be that of an independent contractor. The method and manner in which Contractor's services hereunder shall be performed shall be determined by Contractor in its sole discretion, and City will not exercise control over Contractor or its employees except insofar as may be reasonably necessary to ensure performance and compliance with this Agreement. The employees, methods, equipment and facilities used by Contractor shall at all times be under its exclusive direction and control. Nothing in this Agreement shall be construed to designate Contractor or any of its employees, as employees or agents of City.

SIGNATURES CONTINUED ON NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

CITY OF DES MOINES, IOWA



Scott Sanders
City Manager

PARKMOBILE, LLC



Hank Vanjaria
Chief Financial Officer

Attest:



P. Kay Cmelik, City Clerk

Approved as to Form:



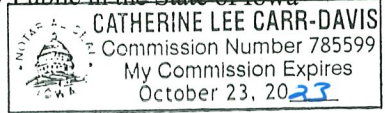
Ann DiDonato, Assistant City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 4th day of October, 2021, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared SCOTT SANDERS and KAY CMELIK, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of the City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of Roll Call No. 21-1485, passed by the City Council on October 4, 2021 and that SCOTT SANDERS and KAY CMELIK acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

Catherine Lee Carr-Davis

Notary Public in the State of Iowa



STATE OF Georgia)
) ss:
COUNTY OF Fulton)

On this 23rd day of Sept, 2021 before me the undersigned, a Notary Public in and for said County, in said State, personally appeared HANK VANJARIA, to me personally known, who, being by me duly sworn, did say that he is the CHIEF FINANCIAL OFFICER of PARKMOBILE, LLC, a Delaware limited liability company; that the instrument was signed on behalf of the corporation by authority of its Board of Directors; and that said officer acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by her voluntarily executed.

Anthony Stewart

Notary Public for State of Georgia



EXHIBIT A

SCOPE OF SERVICE

Contractor agrees to provide Pay-by-Cell Application Services (PbC App Services) for the City's Multi-Space Parking Meter (MSM) System and perform the services identified in the City's Request for Proposal (RFP) #N21-33, page 6 to 14, inclusive(Exhibit C) and the Contractor's Proposal (Exhibit D), except as modified by this Agreement pursuant to the following terms, conditions, and revisions.

1) Multi-Space Meter System and Enforcement Integration: At no cost to the City, Contractor shall be responsible to coordinate with the City's multi-space meter pay stations provider, Flowbird, and for the integration of the real-time space status data on transactions made by this PbC App Service with the City's multi-space meter pay stations, provided by Flowbird and the present and future parking enforcement system. Cardinal TickeTrak software is the present parking enforcement system used by the City. All mobile payment transactions will be registered first with the Flowbird management system software which then transfers the payment information to Cardinal TickeTrak software used by enforcement officers on mobile devices. There is also an integration directly between the mobile payment system and the Cardinal TickeTrak software that can be used as a "final check" before an enforcement officer issues a citation. The City reserves the right to make changes to the system architecture in the future. The Service will be required to integrate with any new systems adopted by the City, to the extent commercially reasonable.

2) End User Fee: The End User's \$0.25 convenience fee per transaction to be charged to End Users shall be clearly communicated to the End User prior to completing a Transaction. Contractor will only charge a convenience fee when the End User uses the User App and PbC App Service. The City shall be responsible for any applicable sales, use, revenue, excise or similar taxes on the convenience fee.

3) Payment Processing: In accordance with RFP Section 3.D.8, Contractor will accept electronic payment from End Users including traditional credit or debit card payments with Visa, MasterCard, Discover, and AMEX, and will also use commercially reasonable efforts to accommodate emerging payment trends such as Apple Pay and Google Pay where possible, as determined by Contractor.

As described on page 37 of the Proposal, Contractor will pass real time authorized payments transactions using the Contractor's gateway to the City's payment processor at no cost to the City. Contractor shall invoice and provide the City reports monthly, as specified by the City, of End User Fees for all transactions. The City will act as the Merchant of Record in the credit card processing. The City will be responsible for related banking and merchant processing fees. A separate Merchant ID (MID) will be established for the City's on-street parking meter system.

4) End User interface: In customizing the User App for the City's on-street parking system, Contractor shall use the City's current space numbering system wherein each metered space has a unique space number and tariff code assigned to each City metered space. The tariff code includes the days of enforcement, hourly limit, rate per hour, any restrictions on parking and may contain special events rates. There will be no cost to the City for any set-up, updating or modifications to the End User interface.

5) Branded Application and other Marketing: Contractor shall provide, at no cost to the City, a branded mobile software application with the City having its trademark/logo on the Contractor's application and other marketing materials, subject to the prior written approval of the City. All good will from use of the City's trademark and logo shall inure to the sole benefit of the City. Content and promotions contained within the branded mobile software, or any other marketing or promotions, including advertising for third parties, must be approved in writing by the City prior to publication and implementation by the Contractor. The Contractor must give the City's project manager or designee at least 10 business days to consider approval of proposed marketing or promotions. If a third-party advertisement is approved by the City, the City will receive 50% of any revenues received by the Contractor from the third-party advertisements or marketing efforts. The Contractor will provide a monthly summary and accounting of any third-party advertising on the Branded application and make payments to the City monthly.

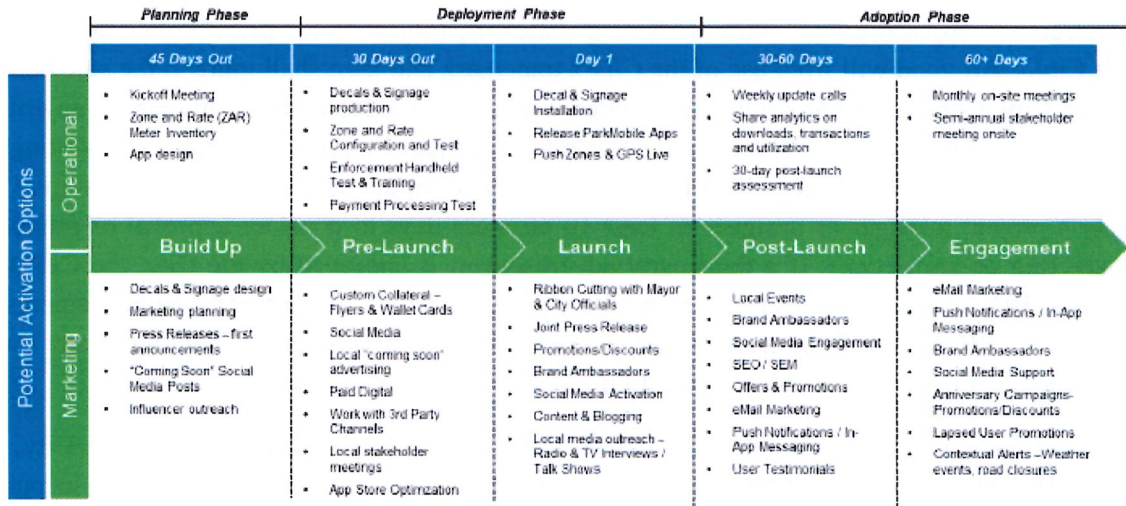
7) Signage: Contractor shall provide all signage deemed necessary by the City, as commercially reasonable, at no cost to the City. All signage and advertising placed in public places must meet the City's written approval prior to placement. All signs and advertising for the PbC App Services will include mutually agreed upon language and/or design identifying that the Services are provided by and/or powered by Contractor. Installation and maintenance of all signage is the City's sole responsibility.

8) Integration with City's Parking Garage System: Contractor will coordinate with the City, ABM Parking Services, the City's parking garage management provider, and SkiData, the City's parking and revenue control system provider to directly integrate the ParkMobile payment application with the City's off-street parking garages and SkiData parking and revenue control system. The schedule for this integration will coincide and follow the schedule and activities shown in Exhibit B. The City's parking garage revenue system will have separate and different Merchant IDs (MIDs) than that for the on-street parking meter system.

EXHIBIT B

SCHEDULE

The Schedule is depicted in the diagram below from the Proposal on pages 59 to 60 and will include the activities shown. Contractor shall cooperate with the City to coordinate with the City’s installation project for multi-space meters (MSM) and activities may be adjusted accordingly with regards to the Deployment Phase, as determined by the City.



The Key Dates for the launch of PbC App Services are:

- Contract Approved by City Council – September 13, 2021
- Planning Phase –September – October 2021
 - o Kick-off meeting: week of September 20, 2021
 - o Build-up activities: Starting no later than October 15, 2021
- Deployment Phase – October – November 2021
 - o Pre-Launch activities: Starting no later than November 1, 2021
 - o Launch and Go Live Date: December 1, 2021
- Adoption Phase – December 2021 – April 2022
 - o Post-Launch activities: Commencing December 1, 2021
 - o Engagement activities: Commencing February 1, 2022

EXHIBIT C

**Proposal submitted by ParkMobile, LLC dated September 18, 2020, to RFP #N21-33
Pay-By-Cell Application for a Multi-Space Parking Meter Payment System for the City of
Des Moines, Iowa**

EXHIBIT D

City of Des Moines, Iowa Request for Proposals for Pay-By-Cell Application for a Multi-Space Parking Meter System, RFP #N2133, issued August 24, 2020

ATTACHMENT 1

SOFTWARE MAINTENANCE AND HOSTING SERVICE AGREEMENT

Contractor agrees to provide the maintenance and hosting services for the Software for the PbC App Services (“System”) pursuant to the terms of this Software Maintenance and Hosting Service Agreement, which is incorporated as part of this Agreement.

I. Hosting Services

A. Services

1. Contractor agrees to provide all Software hosting services, including Software access, data storage, data import / export, maintenance, monitoring, support, backup and recovery, change management, and technology upgrades necessary for CITY’s productive use of the Software via the Internet (the “Services”).

2. **Authorized Users.** CITY shall be responsible for all designated user identification and password change management according to user management procedures described in Contractor’s training or Documentation provided to CITY.

4. **Secure Access to Software.** For the purposes of delivering the Services, Contractor shall install and make operational the Software on host computers located at the Contractor’s third-party hosting facility. Contractor shall maintain the Software in operational condition as described in the Proposal and Exhibit A. Contractor shall provide the CITY with access to the Software via secured HTTPS web access over the Internet.

5. **Availability of Software, and Services.** Contractor shall provide and maintain access to and use of the Software, and Services by CITY and the public for public facing applications twenty-four (24) hours a day, seven (7) days a week including holidays in compliance with service levels further described in **Exhibit A to this Attachment 1.**

a. **Outage.** “Outage” is defined as an unscheduled interruption of CITY’s or the public’s use of the Software or Services that makes the equipment, Software or Services non-operational as further described in Exhibit A. Upon detecting an outage or receiving report of an outage, Contractor will follow the outage reporting process further described in Exhibit A and shall perform the level of care necessary to restore the Software and Services to operation as soon as reasonably possible, time being of the essence. Following the outage reporting process further described in Exhibit A, City shall report a believed outage to Contractor,

and Contractor shall provide CITY with written notice of a confirmed outage as soon as possible.

b. **Scheduled Maintenance.** “Scheduled Maintenance” is defined as a planned interruption of CITY’s or the public’s use of the Software or Services for hardware and software updates, enhancements, and fixes or other routine maintenance. Contractor shall perform such operations during scheduled maintenance windows according to Service Levels further described in Exhibit A.

6. **Backup and Recovery of CITY Data.** As a part of the Services, Contractor is responsible for maintaining a backup of CITY data, for an orderly and timely recovery of such data in the event that the Services may be interrupted, or CITY data may be corrupted or destroyed. Contractor shall maintain a contemporaneous backup of the CITY data that can be recovered by Contractor within the timeframe described in Exhibit A. Additionally, Contractor shall store a backup of CITY data in an off-site, secure, and disaster-resilient facility according to the schedule and frequency described in Exhibit A. In the event of an outage in which CITY data is lost or corrupted, Contractor will follow the process for recovery of CITY data described in Exhibit A.

II. **Hosting and Software Hosting Services Levels**

A. **Service Levels Reviews.** Contractor and CITY will meet as often as shall be reasonably requested by CITY to review the performance of Contractor as it relates to the Service Levels further described in Exhibit A.

B. **Failure to Meet Service Level Requirements.** As further described in Exhibit A, in the event Contractor does not meet any of the Service Level Requirements, Contractor shall: (a) reduce the next monthly invoice to CITY by the amount of the applicable Performance Credits listed in Exhibit A as a credit, and not as liquidated damages; and, (b) use its best efforts to ensure that any unmet Service Level is subsequently met. Notwithstanding the foregoing, Contractor will use commercially reasonable efforts to minimize the impact or duration of any outage, interruption, or degradation of Service.

A. **Non-exclusivity.** Nothing herein shall be deemed to preclude CITY from retaining the services of other persons or entities undertaking the same or similar functions as those undertaken by Contractor under this Attachment 1; however, nothing herein shall be construed to vitiate Contractor’s rights pursuant to the Contract and under law.

B. **Subcontractors and Assignment.** Contractor is solely responsible for the performance of the Hosting, Software and Services, including any subcontractor software, hardware, equipment, facilities, services, or technologies, in compliance with the Agreement, including the Service Level Requirements set forth in Exhibit A.

Contractor shall not enter into any subcontracts for the performance of the Services, or assign or transfer any of its rights or obligations under this Agreement, without CITY's prior written consent and any attempt to do so shall be void and without further effect, subject to Section 28.a of the Agreement. CITY's consent to Contractor's right to subcontract or assign any of the Services shall not relieve Contractor of any of its duties or obligations under this Agreement, and Contractor shall indemnify and hold CITY harmless from any payment required to be paid to any such subcontractors. Contractor shall require subcontractors, if any, to comply with the applicable terms of this Agreement for all Software or Services provided by such subcontractor, including without limitation, Information Security Program requirements.

III. Term, Renewal and Termination

A. **Expiration or Termination Assistance Services.** Contractor will provide to CITY and / or to the service provider selected by CITY (such service provider shall be known as the "**Successor Contractor**"), assistance reasonably requested by CITY in order to effect the orderly transition of CITY data, in whole or in part, to CITY or to Successor Service Provider (such assistance shall be known as the "**Termination Assistance Services**") during the thirty (30) calendar day period prior to, and / or following, the expiration or termination of this Agreement, in whole or in part (such period shall be known as the "**Termination Assistance Period**"). Contractor's services shall allow the CITY System to continue to be live during such Transition Assistance Period. CITY agrees to reimburse Contractor for its reasonable costs of providing the Termination Assistance Services, unless this Agreement is terminated for cause.

1. Such Termination Assistance Services shall include the following, subject to the CITY's request for such services:

- a. Using commercially reasonable efforts to export CITY data to Successor Contractor's required format or migrate CITY data to Successor Contractor's hosted service without data loss and minimizing interruption to CITY business operations.
- b. Other activities described in Exhibit A.
- c. Such other activities upon which the parties may agree.

This Section shall survive the termination of the Agreement.

IV. Contractor Representations and Warranties

A. **Contractor represents and warrants that:**

1. The Software and Services will achieve in all material respects the functionality described in the CITY's RFP and Contractor's Proposal and that such functionality shall be maintained during the term of the Agreement.

2. Contractor will use its best efforts to ensure that no computer viruses, malware, or similar items (collectively, the “Virus”) are introduced into Contractor’s environment impacting service to CITY.

3. The Software and Services and any other work performed by Contractor hereunder shall be its own work, and shall not infringe upon any United States or foreign copyright, patent, Trade Secret, or other proprietary right, or misappropriate any Trade Secret, of any third-party, and that it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title, or interest to any technology or intellectual property right that would conflict with its obligations under this Agreement.

B. Liability and Indemnification for Intellectual Property Infringement

1. **Infringement Indemnification.** Contractor agrees to indemnify, pay on behalf of, defend and hold harmless CITY against any and all liability, suits, claims and proceedings (including reasonable attorney and professional fees) brought or incurred on the basis that the Software or Services and any permitted use, sale, or license of such Software or Services constitutes an infringement of any patent, copyright, or trademark of any third-party in any country, or a misappropriation of any trade secret, or a breach or violation of any intellectual property right, moral right, or right of publicity of any third-party. As a condition of this indemnification, CITY shall promptly notify the Contractor to the extent it becomes aware of a claim of infringement.

2. **Election of Remedy.** If CITY’s use of the Software or Services is the subject of a claim of infringement, Contractor shall reimburse the CITY for all reasonable and documented direct costs that the CITY incurs, including City staff time, with any of the following options, and, at Contractor’s expense, perform the following in the order presented:

- a. procure for CITY the continued right to use the Software or Services as permitted herein, or if not reasonably possible;
- b. replace the Software or Services with functionally equivalent non-infringing Services, or if not reasonably possible;
- c. modify the Software or Services so it becomes non-infringing but remains functionally equivalent to its pre-modified version.

If required, CITY will cease any infringing use of the Software or Services. This section states the entire responsibility of CITY and its representatives for infringement by CITY.

V. General Terms

I

A. **Survival.** Sections III and IV of Attachment 1 shall survive and be unaffected by the termination of the Agreement.

B. **Publicity.** Contractor will not, without CITY's prior written consent make any news release or public announcement or in any manner advertise or publish the fact of this Agreement. Contractor will not use the CITY logo or CITY name in any media without the prior written authorization of the City Manager.

EXHIBIT A to ATTACHMENT 1

Contractor Hosting Service Level Requirements

The below described Requirements apply for all Software and Services provided by Contractor under the Agreement.

I. SERVICE AVAILABILITY

A. Operational, Management and Maintenance of the System

ParkMobile will use commercially reasonable efforts to schedule downtime for routine maintenance of the Services between the hours of 12:00 a.m. and 4:00 a.m., Eastern Time; however, ParkMobile may modify this window from time-to-time by providing the City with advance notice. If ParkMobile anticipates that it will need to perform maintenance activities that are likely to be disruptive to the use of the Services outside of the scheduled maintenance window, ParkMobile will use commercially reasonable efforts to give the City at least 24 hours prior notice. Notwithstanding the foregoing, ParkMobile reserves the right to perform any required emergency maintenance work outside of the scheduled maintenance window. To the extent practicable, ParkMobile will use commercially reasonable efforts to notify the City before commencing any emergency maintenance outside of the scheduled maintenance window and will use commercially reasonable efforts to limit or avoid impact to use of the Services.

B. Errors and Interruptions

Contractor shall at all times during term of this Agreement provide a service level to meet or exceed 99.9 percent up-time for the Service. When an error or interruption occurs in the Services, the City shall inform the Contractor as soon as possible. Contractor shall confirm its receipt of such notification in writing. If Contractor cannot repair any errors or interruptions that cause Services downtime within 24 hours from the time when the error or interruption is reported to Contractor, Contractor will issue a credit to the City for downtime in the excess of 24 hours. The amount of the credit will be \$50.00 per hour the Service is down past 24 hours until the time the Service is restored. The City will, at its own discretion, withhold these amounts from the remittance of End-User Fees to the Contractor.

C. Security and Authorizations

Contractor shall protect and authenticate a limited number of representatives that shall have access to the Contractor's backend systems and confidential End-User information such as name, address, credit card number, etc. The Parties shall respect and utilize security access codes.

D. Reports

Contractor shall provide at no cost to the City a self-administration web portal which can change operational settings in live time such as eliminating parking zones, adjusting tariff packages, and scheduling event rates. The portal shall also provide access to comprehensive operational data such as payment method, card type, time and length of parking session, location of a parking session, parking history, active users and other revenue and audit reports. Contractor shall also provide at no cost to the City any ad-hoc reports as reasonably needed.

II. TECHNICAL SUPPORT AND MAINTENANCE

Upon Final acceptance as set forth in Section 7 of the Agreement and this Exhibit A, Contractor will provide CITY Technical Support and Maintenance as follows.

A. Technical support

Contractor's technical support will include answering questions and responding to error reports from any qualified employee of the CITY by telephone, email, or online service request. Contractor will make all commercially reasonable effort to make the System function correctly in accordance with then-current Documentation, product features described in the Proposal, and any mutually agreed upon change order specifications. Contractor will prioritize service requests and respond within the applicable timeframe based on incident severity level as set forth the Proposal.

CITY will report technical support service requests to Contractor following procedures set forth in Section I.A.4 of this Attachment 1. If Contractor does not respond to a service request in the timeframes provided in Attachment 1 and applicable to the incident severity level, CITY will follow the Process and Contacts for Escalation in Section V of this Exhibit A.

B. Software maintenance and upgrades

Contractor will make periodic updates, enhancements, or fixes to the System and the Software as set forth in Section I.A.4 of this Attachment 1. Contractor will make commercially reasonable effort to provide CITY with a minimum of ten (10) business days advance written notice of any impending updates, enhancements, or fixes that

materially impact CITY business operations and use of the Software following the Process and Contacts for Escalation in Section V of this Exhibit A.

III. DATA BACKUP, RECOVERY, AND EXPORT

A. Backup of CITY Data

Contractor will maintain a contemporaneous backup of CITY data that can be restored by Contractor within two (2) days of a confirmed outage in which CITY System or data is lost or corrupted. Contractor will store a backup of CITY data in an off-site, secure, and disaster-resilient facility at minimum every twenty-four (24) hours throughout every twenty-four (24) hour period, seven (7) days a week including holidays.

B. Recovery of CITY Data

In the event of a confirmed outage in which CITY Data is lost or corrupted, Contractor shall as soon as possible provide the CITY with written notice of such corruption or loss, following the Process and Contacts for Escalation in Section V of this Exhibit A. Contractor will include a reasonable description of what CITY Data was lost or corrupted and actions and timeline required to correct the data, before the CITY data is replaced or restored from backup. The CITY shall have the right to prevent the replacement or restoration of CITY Data at its discretion and Contractor then agrees to cooperate with CITY in determining a plan to correct the CITY Data to CITY's satisfaction. Upon written notice from CITY to proceed with replacing or restoring CITY Data from backup to production, Contractor will immediately follow the agreed upon actions and timeline to complete the recovery.

C. Export of CITY Data

Upon request of CITY, Contractor will provide an export of CITY Data in a CITY approved format.

IV. INFORMATION SECURITY PROGRAM

A. CITY Data Location

Contractor and its subcontractors will store all CITY content in hosting facilities within the United States exclusively and as identified in Contractor's proposal. Contractor will provide CITY with written notice a [minimum of five (5) business days] in advance of any change in data location following the Process and Contacts for Escalation in Section V of this Exhibit A.

B. DataContent Retention

Contractor will retain CITY data for a mutually agreed upon period of time no less than 30 days following termination of the Agreement. Contractor will return and dispose of

CITY data to CITY in accordance with the terms of Section III (Term, Renewal and Termination) of this Attachment 1.

C. Regulatory Standards

Contractor will comply with applicable current privacy rules and data protection standards required by SOC 2, PCI-DSS and will certify its compliance to CITY annually.

D. Accessibility

Contractor will comply with current accessibility standards required by Section 508 of the Workforce Rehabilitation Act of 1973 (Section 508) and the Americans with Disabilities Act and implementing regulations (ADA) and certify its compliance to CITY upon written request by the CITY. CITY reserves the right to notify Contractor of the CITY's obligation under Section 508 and/or ADA and assess the Contractor's Software and Services for accessibility. Contractor will in good faith respond to the CITY assessment. Contractor will at its own expense take all actions to remedy deficiencies in accessibility in its Software and Services and provide to CITY a timeframe for becoming Section 508 and/or ADA compliant. If Contractor has certified its Section 508 compliance to CITY and is found to be non-compliant resulting in federal fines being imposed on CITY, Contractor shall pay the applicable fines and associated legal fees.

E. Notification

Contractor will promptly notify the CITY of any known security breach following the Process and Contacts for Escalation in Section V of this Exhibit A.

V. PROCESS AND CONTACTS FOR ESCALATION

CITY and Contractor acknowledge and agree that the 1st Level Escalation is always the first point of contact for reporting Incidents. The CITY and Contractor staff answering that line will escalate issues internally in accordance with the below chart. For reporting outages and mission critical incidents, if CITY or Contractor is unable to make contact with the other party or to confirm receipt of the report, the party making the report will attempt to contact the next highest level of escalation.

Order of Escalation	Contractor Contact	CITY Contact	Call Back Time for Outage and Mission Critical Incidents
1 st Level	Title: Account Manager Phone: 678-973-1171 Email:	Title: HelpDesk Phone: 515-283-4700 or on call referral	15 minutes

	abby.kremer@parkmobile.io	number. Email: helpdesk@dmgov.org	
2 nd Level	Title: VP, Account Management Phone: Email: brooke.feldman@parkmobile.io	Title: Traffic Facilities Manager Phone: 515-283-4086 Email: SDAnderson-Lanies@dmgov.org	15 minutes
3 rd Level	Title: Chief Operating Officer Phone: Email: john.brown@parkmobile.io	Title: City Traffic Engineer Phone: 515-283-4973 Email: jadavis@dmgov.org	15 minutes
Executive	Title: Chief Revenue Officer Phone: Email: David.hoyt@parkmobile.io	Title: City Engineer Phone: 515-283-4563 Email: slnaber@dmgov.org	15 Minutes

VI. SUBCONTRACTORS

A. Subcontractor identification

Contractor is using the following subcontractor(s) for the following services:

Subcontractor Name	Subcontractor Address	Subcontractor Software or Service Provided
Amazon Web Services (AWS)	410 Terry Ave. N, Seattle, WA 98109-5210	Hosting
Notatek/Sign City	1584 S 580 E, American Fork, UT 84003	Signage

B. Changes to Services and subcontractors

Any changes to the Services provided by a subcontractor or the acceptance of other subcontractors under this Agreement shall be by execution of a written addendum by authorized representatives of Contractor and the City Engineer.

VII. SERVICE LEVEL REVIEW AND AMENDMENTS

A. Service Level Review

The following contacts or their designees are authorized to conduct Service Levels Reviews on behalf of CITY and Contractor:

Contractor Contact	CITY Contact
Title: Chief Technology Officer Phone: Email: chris.huff@parkmobile.io	Title: City Traffic Engineer Phone: 515-283-4973 Email: jadavis@dmgov.org

B. Changes to Service Level Requirements

These Service Level Requirements may be amended by execution of a written addendum by authorized representatives of Contractor and the City Engineer.

EXHIBIT B to ATTACHMENT 1

Contractor Technical Support and Maintenance Policy

Maximum Response Times via Severity Level

- 1 hour for crisis issues
- 4-6 hours for critical issues
- 24 hours for normal issues

Crisis issues are defined as when a System error renders the equipment or System completely unusable or nearly unusable or introduces a high degree of operational risk and no workaround is available. Until every error is resolved, use of the multi-space parking system is essentially halted. A large number of users and or core program functionality a severely impacted.

Critical issues are defined as System errors that prevent the system or over 50% of the system to collect payment.

Normal issues are defined as System errors that are an inconvenience or causes a consistent behavior of the equipment or System, which does not impede the normal functioning of the equipment or System. It could be an error that occurs consistently and affects non-essential functions and is an inconvenience which impacts a small number of users.

Technical Support Escalation:

If an issue cannot be remedied by the Tech Support technician within 3 days, (VP, Account Management), will assemble a team to work on the issue and have a conference call with the CITY explaining the resolution path the Contractor will take to resolve the issue. If additional time is needed, the VP, Account Management will contact and notify the CITY with an explanation and a follow-up date as agreed by both the CITY and Contractor.

Contractor Support

- 24/7, including holidays - Phone Support
- 24X7X365 Portal & Email Support
- Dedicated support staff to provide assistance and answer all questions
- Training refreshers
- Video tutorials and online training manual

ATTACHMENT 2

INSURANCE & INDEMNIFICATION REQUIREMENTS (From RFP)

For the purposes of this Attachment and all provisions included herein, the term "CITY" shall mean the City of Des Moines, Iowa, including its elected and appointed officials, employees, agents, volunteers, boards, commissions and others working on its behalf. For the purposes of this Attachment and all provisions included herein, the term "CONSULTANT" shall mean ParkMobile, LLC.

1. GENERAL

The CONSULTANT shall purchase and maintain insurance to protect the CONSULTANT and CITY throughout the duration of the Agreement. Said insurance shall be provided by insurance companies "admitted" or "non-admitted" to do business in the State of Iowa having no less than an A. M. Best Rating of "B+." All policies, except professional liability, shall be written on an occurrence basis and in form and amounts satisfactory to the CITY. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the CITY prior to Agreement execution or commencement of work and/or services.

2. INSURANCE REQUIREMENTS

C. COMMERCIAL GENERAL LIABILITY INSURANCE: Commercial General Liability insurance on an occurrence basis with limits of liability not less than \$1,000,000 per occurrence and/or aggregate combined single limit covering Personal Injury, Bodily Injury and Property Damage. Coverage shall include: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) Explosion, Collapse and Underground- XCU (when applicable). *Waiver of Subrogation in favor of the CITY is required as per paragraph 2.F. below.*

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by ISO standard Commercial General Liability Policy form ISO CG 0001 including standard exclusions or a non-ISO equivalent form. *The CITY shall not be included as an Additional Insured.*

D. CONTRACTUAL LIABILITY: The Contractual Liability coverage required above shall include the cost of defense and settlement. CONSULTANT agrees to submit to its insurance carrier, on behalf of the CITY, any claim or demand against the CITY for which the CONSULTANT has agreed to defend, indemnify and hold the CITY harmless in Section 3 Indemnification below, and to do so in a timely manner so required in its insurance policies.

E. WORKER'S COMPENSATION & EMPLOYER'S LIABILITY INSURANCE: As required by State of Iowa Workers' Compensation Law, the CONSULTANT shall procure and maintain Worker's Compensation Insurance, including Employer's Liability Coverage. The Workers' Compensation Insurance shall be written with State of Iowa statutory limits. If, by

Iowa Code Section 85.1A, the CONSULTANT is not required to purchase Workers' Compensation Insurance, the CONSULTANT shall have a copy of the State's Nonelection of Workers' Compensation or Employers' Liability Coverage form on file with the Iowa Workers' Compensation Insurance Commissioner, as required by Iowa Code Section 87.22. ***Waiver of Subrogation in favor of the CITY is required as per paragraph 2.F. below.***

F. **PROFESSIONAL LIABILITY INSURANCE:** Professional Errors and Omissions Insurance with limits not less than \$2,000,000 per claim and in the aggregate.

G. **CANCELLATION & NONRENEWAL NOTIFICATION:** The CONSULTANT shall provide the City with no less than ten (10) days notification of cancellation or nonrenewal of the General Liability Insurance and Professional Liability Insurance policies required above. ***Written notifications shall be sent to: City of Des Moines, Procurement Division, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.***

H. **WAIVER OF SUBROGATION:** To the fullest extent permitted by law, CONSULTANT hereby releases the CITY from and against any and all liability or responsibility to the CONSULTANT or anyone claiming through or under the CONSULTANT by way of subrogation or otherwise, for any loss without regard to the fault of the CITY or the type of loss involved including loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Agreement. The CONSULTANT'S Workers Compensation Insurance and General Liability Insurance policies shall contain either a policy provision or endorsement affirming the above stated release in favor of the CITY including its elected and appointed officials, agents, employees and volunteers, and others working on its behalf.

I. **PROOF OF INSURANCE:** The CONSULTANT shall provide the following proof of insurance to the CITY:

- **Certificates of Insurance** evidencing all insurance coverage as required in paragraphs A through F above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify the Title of the Agreement under "Description of Operations/Locations/Vehicle/Special Items" and indicate Waiver of Subrogation by marking the corresponding boxes on COI and/or including a statement of compliance under Description of Operations.

Mail Certificates of Insurance to: City of Des Moines, Procurement Division, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.

J. **AGENTS, SUBCONSULTANTS AND SUBCONTRACTORS:** The CONSULTANT shall require all its agents, subconsultants and subcontractors who perform work and/or services on behalf of the CONSULTANT to purchase and maintain the types of insurance customary to the industry or trade related to the services being provided.

3. INDEMNIFICATION REQUIREMENTS

For other than professional services rendered, to the fullest extent permitted by law, CONSULTANT agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY

against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys' fees and court costs that may be asserted or claimed against, recovered from or suffered by the CITY by reason of any injury or loss including, but not limited to, personal injury, bodily injury including death, property damage including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with CONSULTANT'S work or services under this Agreement, including that of its officers, agents, employees, subconsultants, subcontractors and others under the control of CONSULTANT.

The CITY shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by CONSULTANT arising out of or in any way connected or associated with CONSULTANT'S work or services under this Agreement, including that of its officers, agents, employees, subconsultants, subcontractors and others under the control of CONSULTANT, except to the extent caused by or resulting from the negligent act or omission of the CITY.

CONSULTANT expressly assumes responsibility for any and all damage caused to CITY property arising out of or in any way connected or associated with CONSULTANT'S work or services under this Agreement, including that of its officers, agents, employees, subconsultants, subcontractors and others under the control of CONSULTANT.

CONSULTANT shall ensure that its activities on CITY property will be performed and supervised by adequately trained and qualified personnel and CONSULTANT will observe all applicable safety rules.